

MEMORANDUM

TO: Members, Public Disclosure Commission

FROM: Susan Harris, Assistant Director

DATE: April 3, 2002

RE: Report on Investigation of the National Education Association

On January 31, 2002, a citizen action letter (pursuant to RCW 42.17.400) was filed by the Evergreen Freedom Foundation (EFF) and individuals alleging that the National Education Association (NEA) violated the following:

- RCW 42.17.040 by failing to register and report its Ballot Measure/Legislative Crisis and Media Campaign fund as a political committee;
- RCW 42.17.680 by diverting a portion of an employee's wages or salaries for contributions to political committees or for use as political contributions without the written authorization of the employee; and
- RCW 42.17.760 by using agency shop fees to make contributions or expenditures to influence an election or to operate a political committee without authorization from the employee.

Staff has completed its investigation of these allegations.

Findings regarding alleged violation of RCW 42.17.040

In July, 2000, the Representative Assembly of the NEA passed a bylaw, effective September 1, 2000, that created the Ballot Measure/Legislative Crisis Fund and a Media Campaign Fund (the NEA segregated the fund into two separate accounts.)

The Ballot Measure/Legislative Crisis Fund (the Ballot Fund) was designed to assist state affiliates in dealing with ballot measures and legislative crises within their respective states. The Media Campaign (the Media Fund) was designed to be used for national and state media campaigns to advance the cause of public education and to publicize the role of the NEA and its affiliates in improving the quality of public education.

The Bylaw established a five-dollar increase to members (and fee payers), 60% of which would be deposited into a segregated Ballot Fund and 40% into the Media Fund. This Fund was designed to be funded for a five-year period. The Bylaw allowed states to opt out of funding the Ballot Fund component if state law did not allow such activity. The WEA opted out, and all funds collected from NEA Washington members and fee payers were deposited only into the Media Fund.

Since no money from NEA Washington members or fee payers was placed in the Ballot Fund, staff does not believe that this fund is required to report as a political committee under RCW 42.17.040.

In addition, since the Media Fund (the fund into which all Washington members' and fee payers' monies were deposited) does not make political contributions, it is also not required to report as a political committee pursuant to RCW 42.17.040.

Findings regarding alleged violation of RCW 42.17.680

Regardless of whether the NEA used funds received from members and fee payers to make contributions to political committees or as political contributions without the written authorization of the employee, the NEA is not the employer or entity responsible for the disbursement of funds in payment of wages or salaries. Therefore, the NEA had no legal obligation to obtain written requests from its members.

Findings regarding alleged violation of RCW 42.17.760

For FY 98-99, the NEA contributed \$15,000 to the Paycheck Protection Initiative and an additional \$15,000 to No On Initiative 200. The NEA used its general fund money to make these contributions.

For that period, the NEA's general fund contained both member dues and non-member agency shop fees.

During FY 99-00, on July 14, 2000, the NEA contributed \$50,000 to Citizens for Quality Educators (Initiatives 728/732). This contribution came from the NEA general fund which contained both member dues and non-member agency shop fees.

During FY 00-01, on September 22, 2000, the NEA contributed \$450,000 to Citizens for Quality Educators. According to an annual report released by Bob Chase, President of the NEA, the entire \$500,000 (the July 2000 and September 2000 contributions) was credited to the Ballot Fund. However, the Ballot Fund was not established until October 2000, and therefore had no funds at the time the contributions were made.

While the segregated funds were to become effective September 1, 2000, documents indicate that the accounts were not established until October 13, 2000.

For FY 00-01, the NEA accessed an unsecured line of credit to augment its general fund when it made the \$450,000 contribution. No agency fee money was used as collateral for the loan. As dues were received for FY 00-01, the line of credit was repaid.

No evidence has been provided to date to substantiate the absence of fee payer money from the source of the funds for the \$450,000 contribution. However, during FY 00-01, the WEA had escrowed all agency fee payer funds and no agency fee payer funds were transmitted to the NEA. The WEA has confirmed that, even following the 70% release of the escrowed fee payer funds, no agency fee payer funds from FY 00-01 were transmitted to the NEA.

Without verification from NEA to the contrary, staff maintains that the \$30,000 contributed by NEA in FY 98-99 and the \$500,000 contributed by NEA in FY 99-00 and FY 00-01 contained agency shop fees, and the NEA did not have written authorization from the fee payers prior to making these contributions.

This activity is not unlike the activity undertaken by WEA in which Thurston County Superior Court Judge Tabor ruled WEA had intentionally violated RCW 42.17.760 by using agency fees to influence an election or operate a political committee when it did not have approval by the agency fee payers. WEA has appealed that decision.

Staff Recommendation

Staff recommends that the Commission urge the Attorney General to move forward with this complaint, but only for the purpose of entering into a stipulated settlement of the claims.

Staff believes that a resolution should include an acknowledgement of violations, a substantial penalty, an agreement to refund agency fee payer money for FY 01-02 and 02-03 (which has occurred for FY 01-02 per the WEA), and a reduction to agency fee payers in future years (based on the WEA Order). Staff also believes that it is appropriate to stay any final imposition of a settlement (penalty payment) until all a final resolution in the WEA appeal.

If a settlement cannot be reached on the grounds stated above, staff do not recommend that the Attorney General proceed with litigation based on the current budget cutbacks and the cost of such litigation.